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**Pro hac vice pending*

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

R.W.,

Plaintiff,

v.

UNITED STATES OF AMERICA; UNITED
STATES OF AMERICA FEDERAL BUREAU OF
PRISONS, a governmental entity; RAY J. GARCIA;
DARRELL SMITH; and CEDRIC KINLAW,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff R.W. (“Plaintiff”), by and through her attorneys allege against the Defendants as
 2 above captioned as follows upon information and belief:

3 INTRODUCTION

4 1. For years, people incarcerated at the Federal Correctional Institute, Dublin (“FCI
 5 Dublin”), a federal female low-security prison with an adjacent satellite camp, have been
 6 subjected to rampant, horrific, and ongoing sexual abuse that continues to this day, including but
 7 not limited to: rape and sexual assault; manipulation and sexual coercion, including officers
 8 entering into relationships with incarcerated individuals and officers forcing incarcerated
 9 individuals to undress in order to be released from cells or for exchange of goods; degrading
 10 sexual comments; voyeurism; taking and sharing explicit photos; drugging, groping, and other
 11 forms of abuse during medical exams; and targeted abuse towards immigrants under threat of
 12 deportation. The Federal Bureau of Prisons (“BOP”) and employees at every level have been
 13 aware of these problems for decades and have failed, and continue to fail to take action to protect
 14 those in its care by preventing and addressing rampant staff sexual misconduct.

15 2. The staff sexual abuse at FCI Dublin became the center of a sprawling criminal
 16 investigation, multiple Congressional inquiries, and national media attention. The United States
 17 Senate’s Permanent Subcommittee on Investigations devoted multiple hearings to addressing its
 18 causes and impact, and issued a report in December 2022 describing the abuse as “horrific” and
 19 Defendant BOP’s investigative practices as “seriously flawed,” and concluding that “BOP
 20 management failures enabled continued sexual abuse of female prisoners by BOP’s own
 21 employees.”¹

22 3. Congress enacted the Prison Rape Elimination Act in 2003, 34 U.S.C. § 30301, *et*
 23 *seq.* (“PREA”) to establish national standards for preventing precisely this kind of sexual abuse
 24 from happening to incarcerated people. Under PREA, the U.S. Department of Justice promulgated
 25

26 ¹ S. PERMANENT SUBCOMM. ON INVESTIGATIONS, REP. ON SEXUAL ABUSE OF FEMALE INMATES IN
 27 FEDERAL PRISONS, 1 (Dec. 13, 2022), [https://www.hsgac.senate.gov/wp-](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf)
 28 [content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf)
[%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf](https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2022-12-13%20PSI%20Staff%20Report%20-%20Sexual%20Abuse%20of%20Female%20Inmates%20in%20Federal%20Prisons.pdf)
 (hereinafter “Senate Report”).

1 detailed mandatory regulations that provide precise procedures that prisons must follow. The
 2 Federal Bureau of Prisons (“BOP”) adopted PREA policies in response to these regulations.

3 4. Despite these mandatory protections, while incarcerated at FCI Dublin from
 4 October 2019 to March 2022, Plaintiff, was forced by Defendant SMITH to engage in sexual acts
 5 with another inmate, and masturbate in front of him and other officers. Defendant KINLAW
 6 sexually harassed Plaintiff and made her perform oral sex on him. When Plaintiff attempted to
 7 speak out against these officers, she was consistently retaliated against with verbal abuse,
 8 prolonged periods in solitary confinement, and destruction of property.

9 5. In doing so, Defendants violated Plaintiff’s Constitutional rights and California law
 10 on gender violence, sexual assault, and common law on battery.

11 6. As a result of Defendants’ actions, Plaintiff suffered numerous emotional injuries
 12 and incurred severe personal injuries, which continue to affect her today.

13 7. Plaintiff brings this suit under the United States Constitution Eighth Amendment’s
 14 prohibition on cruel and unusual punishment. Plaintiff also brings this suit under the Federal Tort
 15 Claims Act (“FTCA”) 28 U.S.C. §§ 2671, *et seq.*, under state law on gender violence and sexual
 16 assault, and in connection with the deficient supervision and custodial care provided by various
 17 BOP personnel, including Defendants SMITH and KINLAW, within the scope of their
 18 employment within the BOP. Plaintiff also brings this suit under the Trafficking Victims
 19 Protection Act (“TVPA”) 22 U.S.C. §§ 7101, *et seq.*

20 JURISDICTION AND VENUE

21 8. This Court has original subject matter jurisdiction in this action involving claims
 22 arising under the United States Constitution pursuant to 28 U.S.C. §§ 1331 and 1346(b).
 23 Plaintiffs’ claims are predicated, in part, upon the FTCA, 28 U.S.C. §§ 2671, *et seq.*, authorizing
 24 actions seeking relief against the United States.

25 9. The Court has personal jurisdiction of the Defendants because the alleged incidents
 26 occurred within the confines of the State of California.

27 10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and 1402(b) as
 28 a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred within the

1 boundaries of this District, in the County of Alameda.

2 **THE PARTIES**

3 11. At all times relevant hereto, Plaintiff was incarcerated in the custody of BOP,
4 incarcerated at FCI Dublin located at 5701 8th St., Dublin, CA 94568. R.W. is now incarcerated
5 at Federal Detention Center SeaTac (FDC SeaTac).

6 12. Defendant United States of America (hereinafter “United States”) is the appropriate
7 defendant for Plaintiffs’ claims under the Federal Tort Claims Act. The United States is a
8 sovereign entity that has waived its immunity for certain claims, including the claims set forth
9 herein, and is liable for the acts or omissions of its agents, servants, contractors, and employees
10 that occur within the scope of their employment.

11 13. At all times relevant hereto, Defendant United States, acting through the BOP, was
12 responsible for the operation, control, supervision, policy, practice, implementation, and conduct
13 of all BOP matters including at FCI Dublin and was responsible for the hiring, retention, training,
14 supervision, management, discipline, and conduct of all BOP personnel, including but not limited
15 to Defendants GARCIA, SMITH, and KINLAW.

16 14. In addition, at all relevant times, United States was responsible for enforcing the
17 rules of the BOP, and for ensuring that BOP personnel obey the Constitution and laws of the
18 United States.

19 15. Defendant DARRELL SMITH (“Defendant SMITH”) was an officer at FCI Dublin
20 during the time period relevant to events described herein and is sued in his individual capacity.
21 While performing the acts and omissions that Plaintiffs allege in this complaint, Defendant
22 SMITH was acting within the scope of his official employment, or with the BOP’s permission and
23 consent and under color of federal law.

24 16. Defendant CEDRIC KINLAW (“Defendant KINLAW”) was an officer at FCI
25 Dublin during the time period relevant to events described herein and is sued in his individual
26 capacity. While performing the acts and omissions that Plaintiffs allege in this complaint,
27 Defendant KINLAW was acting within the scope of his official employment, or with the BOP’s
28 permission and consent and under color of federal law.

1 17. Defendant RAY J. GARCIA (“Defendant GARCIA”) was the associate warden at
2 FCI Dublin between December 2018 and November 2020, and the warden of FCI Dublin from
3 November 2020 to July 2021 – a time that overlapped with Plaintiff being abused by Defendants
4 SMITH and KINLAW. As the warden, Defendant GARCIA was responsible for safekeeping,
5 care, protection, discipline, programming, and release of inmates incarcerated at FCI Dublin.
6 Defendant GARCIA was also responsible for hiring, training, and supervising/managing staff, and
7 determining operating procedures and policies. In his capacity as an agent, servant, and employee
8 of Defendant United States, and within the course and scope of his employment as such,
9 Defendant GARCIA was responsible for the day-to-day oversight, supervision, care, custody,
10 control, direction, safety, and well-being of people confined at FCI Dublin, including Plaintiff.
11 Defendant Garcia is sued in his individual capacity.

12 18. At all times relevant hereto, Defendant United States, acting through the BOP,
13 hired Defendants GARCIA, SMITH and KINLAW to serve as “correctional officers” and “law
14 enforcement officers” within the meaning and powers of 28 U.S.C. § 2680(h).

15 19. While acting and failing to act as alleged herein, Defendants had complete custody
16 and total control of Plaintiff, who was dependent upon Defendants for personal security and
17 necessities.

18 20. In performing the acts and/or omissions contained herein, Defendants acted under
19 color of federal law, and each acted maliciously, callously, intentionally, recklessly, with gross
20 negligence, and with deliberate indifference to the rights and personal security of Plaintiff. Each
21 of them knew or should have known that their conduct, attitudes, actions, and omissions were a
22 threat to Plaintiff and to their constitutionally and statutorily protected rights. Despite this
23 knowledge, Defendants failed to take steps to protect Plaintiff and to ensure that their rights were
24 adequately protected while in the custody of Defendants.

25 21. At all times relevant hereto, each Defendant was the agent, representative, or
26 employee of each other Defendant. At all times relevant hereto, each Defendant was acting within
27 the course and scope of said alternative agency, representation, or employment and was within the
28 scope of their authority, whether actual or apparent. At all times relevant hereto, each Defendant

1 was the authorized agent, partner, servant, or contractor of each other Defendant, and the acts and
 2 omissions herein alleged were done by them acting through such capacity, within the scope of
 3 their authority, with the permission, ratification, approval, and consent of each other Defendant.
 4 Accordingly, each of them is jointly and severally liable to Plaintiff.

5 22. Individual Defendants further directly assaulted, harassed, demeaned, degraded,
 6 and trafficked particular Plaintiffs as alleged herein.

7 **CONDITIONS PRECEDENT TO FEDERAL TORT CLAIMS ACT CLAIMS**

8 23. Plaintiff brings claims under the Federal Tort Claims Act, asserted against the
 9 United States of America.

10 24. Plaintiff exhausted these claims against the United States in accordance with the
 11 requirements of the FTCA.

12 25. Plaintiff submitted a “Claim for Damage, Injury, or Death” to the BOP as a PREA
 13 victim involving staff at FCI Dublin in the sum of \$10,000,000.00. The BOP received her
 14 administrative claim on April 3, 2023. By October 3, 2023, six months after BOP received
 15 Plaintiff’s administrative claim, the BOP has neither accepted nor rejected the claims. Pursuant to
 16 28 U.S.C. § 2675(a), Plaintiff considers this failure to act as a final denial of the claims.

17 **JURY DEMAND**

18 26. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs hereby demand a trial
 19 by jury on all issues and claims in this action that are so triable.

20 **FACTUAL ALLEGATIONS**

21 **I. Federal Law Requires BOP to Take Action to Prevent and Appropriately Respond to** 22 **Reports of Staff Sexual Misconduct**

23 27. Prison staff sexual abuse of incarcerated people constitutes a form of torture that
 24 violates the Eighth Amendment. *See Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020).
 25 Such abusive sexual contact also violates federal criminal law. *See, e.g.*, 18 U.S.C. §§ 2243, 2244.

26 28. The Prison Rape Elimination Act (“PREA”) of 2003 required the Attorney General
 27 to promulgate rules to prevent sexual abuse in prison facilities. *See* 34 U.S.C. § 30307. In 2012,
 28 the U.S. Department of Justice issued regulations designed to “prevent, detect, and respond to

1 prison rape.” *See* 28 C.F.R. § 115, 77 Fed. Reg. No. 119 (June 20, 2012). These regulations were
2 immediately binding on BOP facilities. *Id.*

3 29. Under PREA regulations, BOP is required to “train all employees who may have
4 contact with inmates” on the following: its “zero-tolerance policy for sexual abuse and sexual
5 harassment”; prevention, reporting, detection, and response to such behavior; “the right of inmates
6 to . . . be free from retaliation for reporting sexual abuse and sexual harassment”; signs and
7 dynamics of sexual abuse in confinement, and “common reactions of . . . victims”; and “how to
8 avoid inappropriate relationships with inmates.” *Id.* § 115.31(a). The training must be “tailored to
9 the gender of the inmates at the employee’s facility,” and the agency must conduct a refresher
10 training on PREA standards every two years. *Id.* § 115.31(b)–(c). In off years from the training,
11 “the agency shall provide refresher information on current sexual abuse and sexual harassment
12 policies.” *Id.* § 115.31(c).

13 30. PREA regulations mandate staff reporting. BOP must “require all staff to report
14 immediately . . . any knowledge, suspicion, or information regarding an incident of sexual abuse
15 or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation
16 against inmates or staff who reported such an incident; and any staff neglect or violation of
17 responsibilities that may have contributed to an incident or retaliation.” 28 C.F.R. § 115.61(a).

18 31. Per PREA regulations, administrative investigations of alleged sexual abuse by a
19 staff member or incarcerated person are required to proceed “promptly, thoroughly, and
20 objectively for all allegations, including third-party and anonymous reports.” *Id.* § 115.71(a).
21 Investigators must be specially trained in sexual abuse investigations and must “gather and
22 preserve direct and circumstantial evidence,” including interviewing “alleged victims, suspected
23 perpetrators, and witnesses” and “shall review prior complaints and reports of sexual abuse
24 involving the suspected perpetrator.” *Id.* § 115.71(c)–(b). The agency is prohibited from
25 determining an alleged victim’s credibility based on their “status as inmate or staff.” *Id.* §
26 115.71(e). Investigations are further required to “include an effort to determine whether staff
27 actions or failures to act contributed to the abuse.” *Id.* § 115.71(f). “The departure of the alleged
28 abuser or victim from the employment or control of the facility or agency shall not provide a basis

1 for terminating an investigation.” *Id.* § 115.71(j).

2 32. Substantiated allegations of potentially criminal conduct must be referred for
3 prosecution and the agency must retain written reports of investigations for five years beyond the
4 end of the staff member’s employment. *Id.* § 115.71(h)–(i). After investigating an incarcerated
5 person’s allegation that they were abused, BOP must inform that person of whether their
6 allegation was found to be substantiated, unsubstantiated, or unfounded, even if the investigation
7 was completed by another agency. *Id.* § 115.73(a)–(b). The presumptive disciplinary sanction for
8 substantiated allegations of sexual abuse is termination. *Id.* § 115.76(b).

9 33. PREA also includes measures designed to prevent staff retaliation following
10 incarcerated persons’ reports of abuse. PREA requires that BOP establish a policy to prevent
11 retaliation, and that staff monitor retaliation, provide “emotional support services for inmates . . .
12 who fear retaliation,” and monitor for at least 90 days the conduct and treatment of incarcerated
13 people who report abuse. *Id.* § 115.67. These protective measures include strict limits on the use
14 of administrative segregation. The regulations provide: “Inmates at high risk for sexual
15 victimization shall not be placed in involuntary segregated housing unless an assessment of all
16 available alternatives has been made, and . . . there is no available alternative means of separation
17 from likely abusers. If a facility cannot conduct such an assessment immediately, the facility
18 may” hold the individual in segregated housing for “less than 24 hours while conducting the
19 assessment.” *Id.* § 115.43(a). Any incarcerated person placed in protective custody for this
20 purpose “shall have access to programs, privileges, education, and work opportunities to the extent
21 possible.” *Id.* § 115.43(b).

22 34. Defendants repeatedly violated these regulations. From inadequate training, to lack
23 of confidential reporting mechanisms and access to outside support services, to failures in
24 administrative investigations, widespread misuse of administrative segregation, and rampant staff
25 retaliation, its actions and failures to act created an environment that exposed Plaintiff to an
26 unconscionable risk of sexual violence. As one survivor of staff sexual abuse at Dublin remarked
27 at the trial of Defendant GARCIA, PREA “really doesn’t exist in Dublin.” Transcript at 401,
28 *United States v. Garcia*, No. CR-21-00429-YGR (N.D. Cal. Nov. 29, 2022).

II. FCI Dublin Leadership and Staff Allowed Sexual Assault to Flourish.

35. Eight former officers—including former Warden Ray Garcia and a former chaplain—have been charged with sexual misconduct for incidents spanning from 2019 into 2021, with more charges likely forthcoming. *See United States v. Garcia*, No. 4:21-cr-00429-YGR (N.D. Cal.) (sentenced to 70 months in prison and 15 years of supervised release following jury trial); *United States v. Highhouse*, No. 4:22-cr-00016-HGS (N.D. Cal.) (sentenced to 84 months in federal prison and 5 months of supervised release following guilty plea); *United States v. Chavez*, No. 4:22-cr-00104-YGR-1 (N.D. Cal.) (sentenced to 20 months in federal prison and 10 years of supervised release following guilty plea); *United States v. Klinger*, No. 4:22-cr-00031-YGR (N.D. Cal.) (plead guilty to three counts of sexual abuse of a ward); *United States v. Bellhouse*, No. 4:22-cr-00066-YGR (N.D. Cal.) (sentenced to 63 months in federal prison and 5 years of supervised release following jury trial); *United States v. Smith*, No. 4:23-cr-00110-YGR-1 (charges pending); *United States v. Nunley*, No. 4:23-cr-00213-HSG (N.D. Cal.) (awaiting sentencing following guilty plea for 4 counts of sexual abuse of a ward, 5 counts of abusive sexual contact, and 1 count of false statements to a government agency); *United States v. Jones*, No. 4:23-cr-00212-HSG (N.D. Cal.) (sentenced to 96 months in federal prison and 10 years of supervised release following guilty plea for 6 counts of sexual abuse of a ward and 1 count of false statements to a government agency).

36. Defendant RAY J. GARCIA (“Defendant GARCIA”) was the associate warden at FCI Dublin between December 2018 and November 2020, and the warden of FCI Dublin from November 2020 to July 2021 – a time that overlapped with Plaintiff being abused by Defendants SMITH and KINLAW. As the warden, Defendant GARCIA was responsible for safekeeping, care, protection, discipline, programming, and release of inmates incarcerated at FCI Dublin. Defendant GARCIA was also responsible for hiring, training, and supervising/managing staff, and determining operating procedures and policies.

37. Defendant GARCIA was found guilty of three counts of having sexual contact with an incarcerated person, four counts of abusive sexual contact, and one count of lying to the FBI. Defendant GARCIA was sentenced to 5 years and 10 months in prison.

1 38. In May 2023, Defendant Officer SMITH was also indicted on 12 counts for sexually
2 abusing three incarcerated women and is currently awaiting trial. Officer Smith—widely known as
3 “Dirty Dick Smith”—abused dozens of incarcerated women beginning as early as 2015 and continuing
4 until at least August 2021.

5 39. Defendant GARCIA led training on the Prison Rape and Elimination Act and
6 chaired the audit of FCI Dublin under the PREA. Thus, the man responsible for reporting
7 incidents to the government and teaching inmates how to report rape was in fact a serial rapist of
8 incarcerated people, and he was clearly tolerating and allowing abuse by many more of his
9 underlings, including Defendants SMITH and KINLAW.

10 40. Defendant GARCIA had actual knowledge that the other correctional officers under
11 his supervision were sexually assaulting inmates before and after Plaintiff was abused. Despite
12 this knowledge, Defendant GARCIA did not do anything to stop it, even though he had a duty to
13 do so. Due to the fact that Defendant GARCIA had knowledge of prior sexual abuse at FCI and
14 failing to do anything about it, it allowed FCI agents, representatives, and employees to abuse
15 Plaintiff.

16 41. Defendant GARCIA had actual knowledge that inmates complained about the
17 assaults. Defendant GARCIA knew or should have known that the inmates were subjected to
18 retaliation. Because Defendant did not investigate complaints of abuse and harassment and did
19 not do anything to stop it, inmates, including Plaintiff, were abused. Had Defendant GARCIA
20 taken reasonable actions, which he was under a legal duty to perform, Plaintiff would not have
21 been abused. Defendant Garcia’s intentional indifference to inmate abuse was a substantial factor
22 in Plaintiff suffering abuse.

23 42. PREA guidelines and FCI Dublin policies and procedures required all inmate
24 complaints of sexual assault and sexual abuse filed or reported internally be reported to Defendant
25 GARCIA. During GARCIA’s tenure, complaints of sexual assaults of inmates by correctional
26 officers and/or staff were reported.

27 43. With knowledge of prior abuse against inmates by FCI Dublin, representatives, and
28 employees, Defendant GARCIA failed to protect the inmates and turned a blind eye. Such

1 behavior set the tone for rape culture at FCI Dublin, garnering Garcia and his subordinate
2 correctional officers and employees the nickname – “the Rape Club.”

3 44. Further, Defendant GARCIA and others inadequately supervised and trained the
4 prison’s correctional officers and other employees, including Defendants SMITH and KINLAW.
5 The UNITED STATES failed to supervise which was a substantial factor in causing Plaintiff’s
6 abuse.

7 45. Defendants repeatedly violated the law. From inadequate training, to lack of
8 confidential reporting mechanisms and access to outside support services, to failures in
9 administrative investigations, widespread misuse of administrative segregation, and rampant staff
10 retaliation, its actions—and failures to act—created an environment that exposed Plaintiff to an
11 unconscionable risk of sexual violence. As one survivor of staff sexual abuse at Dublin remarked
12 at the trial of Defendant GARCIA, PREA “really doesn’t exist in Dublin.” Transcript at 401,
13 *United States v. Garcia*, No. CR-21-00429-YGR (N.D. Cal. Nov. 29, 2022).

14 **III. Defendant SMITH Forced Plaintiff To Perform Oral Sex on Another Incarcerated**
15 **Person and Masterbate While He and Another Officer Watched.**

16 46. Plaintiff was incarcerated at FCI Dublin beginning on or around October 2019.

17 47. While Plaintiff was incarcerated at FCI Dublin, Defendant SMITH subjected
18 Plaintiff to extensive sexual harassment.

19 48. One on occasion, in March 2020, Plaintiff. and her friend were found in the wrong
20 unit. Defendant SMITH indicated that he had the power to write up disciplinary reports for both
21 of them, but instead, he said he would not write a disciplinary report if her friend performed oral
22 sex on Plaintiff. Plaintiff was on her menstrual cycle and told Defendant SMITH this information
23 in an attempt to avoid doing this sexual act. Defendant SMITH then instructed Plaintiff to
24 perform oral sex on her friend instead. Plaintiff performed oral sex on her friend while he
25 watched.

26 49. Between January 2021 and March 2021, Defendant SMITH coerced Plaintiff into
27 committing sexual favors. One day during this time period, Plaintiff’s friends were in her room
28 when they were not supposed to be. Defendant SMITH called in another officer and told her

1 friends to dance naked for them. Plaintiff refused to dance naked because she was embarrassed
2 about her body. Because she refused, Defendant SMITH instructed her to masturbate in front of
3 them. He said that if she refused, she was going to be put in the Special Housing Unit (“SHU”)
4 and her friends would receive sanctions. She felt forced to do this so that her friends would not be
5 punished. She knew that she could not seek protection or refuse because of the extensive culture
6 of sexual abuse and protecting each other. Therefore, Plaintiff had no choice but to comply with
7 Defendant SMITH’s orders.

8 **IV. Defendant KINLAW Sexually Harassed and Abused Plaintiff.**

9 50. Defendant KINLAW sexually harassed Plaintiff while she was incarcerated at FCI
10 Dublin. While he worked in the kitchen with Plaintiff, he often told her “Don’t talk to me like an
11 officer,” and asked her to call him “Daddy.” He also often asked Plaintiff to pull her mask down
12 so that he could see her makeup. He called Plaintiff “sexy” when she had makeup on and
13 sometimes gave her instructions to put on makeup when she did not have any on because he liked
14 her better that way. He controlled Plaintiff by requiring her to talk to him and if she looked away
15 to look at anyone else, he told her to only look at him. He also grabbed Plaintiff’s buttocks while
16 she worked in the kitchen.

17 51. Plaintiff knew that other officers, including Officer O’Connor, knew about
18 Defendant KINLAW’s harassment but did nothing about it.

19 52. In July or August of 2021, Defendant KINLAW forced Plaintiff to perform oral sex
20 on him. He brought Plaintiff gifts to induce her to give him sexual favors. This was around the
21 time Plaintiff published and released a book, and after he gave her the gifts, he asked her to sign
22 her book, “To Daddy.” After Plaintiff signed it, he asked her to go to his office in the kitchen. He
23 instructed Plaintiff to go to the back of the office, and he sat in his chair. He told Plaintiff to
24 “make that shit do what it do” and he gestured toward his penis and opened his legs. Because of
25 his position of power, Plaintiff could not say no to him. Plaintiff took out his penis and began to
26 give him oral sex. They were interrupted by another incarcerated person who happened to enter
27 into the room, and Plaintiff was able to quickly leave.

28 53. Defendants SMITH’s and KINLAW’s sexual harassment and abusive behavior

1 caused Plaintiff extreme emotional distress. Plaintiff now cannot sleep and has nightmares.
2 Plaintiff requires sleeping medication and medication for depression now. Plaintiff did not
3 understand how officers who were tasked with supervising her could abuse her this way. Plaintiff
4 feels like her mental and emotional state is in disarray. Plaintiff has further experienced additional
5 physical manifestations of her sleeplessness and depression. To make matters worse, while
6 Plaintiff has been incarcerated, there have been no mental health care providers and no services
7 provided for her.

8 54. Plaintiff attempted to report her abuse any way she could, but she consistently
9 faced retaliation. Plaintiff attempted to file between two to five grievances (BP-8) forms in March
10 and April 2021 about the sexual abuse from both Defendants SMITH and KINLAW, but nothing
11 was done.

12 55. In October 2022, Plaintiff received a letter from Warden Jusino saying that the BP-
13 8s filed on March 5, 2021 and April 21, 2021 were missing and unanswered.

14 56. Plaintiff refiled those grievances in December 2022, but she has yet to receive a
15 response to this day. Plaintiff has spoken to the United States Attorney's Office, the Federal
16 Bureau of Investigations, and the Office of Inspector General on multiple occasions in August
17 2022 regarding the abuse at Dublin.

18 57. As a result, Plaintiff faced a series of retaliatory tactics against her. Officer Jones
19 and Velasquez screamed at Plaintiff in the kitchen, saying "You're snitching on the whole
20 compound!" When Plaintiff spoke back to these officers, Defendant KINLAW removed her from
21 her job position in the kitchen.

22 58. Plaintiff did not feel like she could report her abuse to the Special Investigative
23 Specialist, Officer Putnam, because he threatened to file disciplinary actions against her.

24 59. Plaintiff attempted to file grievances about it to the Warden and Officer Young, but
25 nothing was done.

26 60. Plaintiff was also thrown into the Special Housing Unit so many times for false
27 disciplinary charges she could not count.

28 61. During that time, Plaintiff was not allowed to speak on the phone and all of her

1 outgoing mail was searched. For example, Plaintiff had a disciplinary report written against her
 2 for holding the door open and was thrown into the SHU for nearly two months, between
 3 December 2, 2020 to January 28, 2021.

4 62. Almost immediately after Plaintiff was released from the SHU, officers wrote
 5 another disciplinary report for the same incident on February 10, 2020. Plaintiff had privileges
 6 taken away for six months, including having family video visits and commissary taken away.
 7 Plaintiff was then placed in the SHU once again from March 2021 to July 2021.

8 63. Every time Plaintiff went to the SHU, the officers took all of her property. During
 9 one instance, Officers King and Barahona came into Plaintiff's cell and stomped on all her
 10 belongings. Plaintiff also attempted to file grievances over false disciplinary reports filed against
 11 her in November 2021. Immediately after receiving false disciplinary report in March 2022,
 12 Plaintiff was transferred to FDC SeaTac. Plaintiff believes this was retaliatory for speaking out
 13 against the facility.

14 CLAIMS FOR RELIEF

15 FIRST CLAIM FOR RELIEF

16 *Plaintiff Against Defendants SMITH and KINLAW* (Eighth Amendment, Cruel and Unusual Punishment)

17 64. Plaintiff incorporates by this reference the allegations contained in the preceding
 18 paragraphs as if set forth fully herein.

19 65. Defendants SMITH and KINLAW subjected Plaintiff to serious bodily harm as
 20 defined by the Eight Amendment when they sexually assaulted and harassed Plaintiff and
 21 provided or withheld privileges to coerce sexual favors from Plaintiff.

22 66. Defendants' actions and failures described here caused the Plaintiff's physical,
 23 emotional, and constitutional harms, and she has a claim for damages for such violations under
 24 ongoing deprivation of rights secured by the United States Constitution under the Eighth
 25 Amendment.

26 67. This claim for damages is cognizable under *Bivens v. Six Unknown Named Agents*,
 27 403 U.S. 388 (1971) because it claims the same harm and injury as recognized in *Carlson v.*
 28 *Green* 446 U.S. 14 (1980) and *Farmer v. Brennan* 511 U.S. 825 (1994), two recognized *Bivens*

1 contexts.

2 **SECOND CLAIM FOR RELIEF**
 3 ***Plaintiff Against Defendant GARCIA***
 4 **(Eighth Amendment, Cruel and Unusual Punishment)**

5 68. Plaintiff incorporates by this reference the allegations contained in the preceding
 6 paragraphs as if set forth fully herein.

7 69. Defendant GARCIA was deliberately indifferent to the substantial likelihood of
 8 serious harm to Plaintiff. Despite knowledge, Defendant GARCIA did nothing to prevent the
 9 alleged sexual misconduct and, after Plaintiff reported such misconduct, she was retaliated against.

10 70. Defendant's actions and failures described here caused the Plaintiff's physical,
 11 emotional, and constitutional harms, and she has a claim for damages for such violations under
 12 ongoing deprivation of rights secured by the United States Constitution under the Eighth
 13 Amendment.

14 71. This claim for damages is cognizable under *Bivens v. Six Unknown Named Agents*,
 15 403 U.S. 388 (1971) because it claims the same harm and injury as recognized in *Carlson v.*
 16 *Green* 446 U.S. 14 (1980) and *Farmer v. Brennan* 511 U.S. 825 (1994), two recognized *Bivens*
 17 contexts.

18 **CLAIMS FOR RELIEF UNDER THE FTCA**

19 **THIRD CLAIM FOR RELIEF**
 20 ***Plaintiff Against the United States***
 21 **(Sexual Assault; Sexual Battery – Cal. Civ. Code § 1708.5)**

22 72. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
 23 as if fully set forth herein.

24 73. Plaintiff brings this claim against the United States under the FTCA based on acts
 25 and/or omissions of Defendant United States and all other Defendants, while working in their
 26 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
 27 acting within the scope of their employment as federal employees in their official uniforms during
 28 work hours.

74. A person commits a sexual battery when he acts with the intent to cause a harmful

1 or offensive contact with another by use of the person's intimate part, and a sexually offensive
2 contact with that person directly or indirectly results. Cal. Civ. Code § 1708.5(a)(2).

3 75. Defendants subjected Plaintiff to sexual acts, with the intent to cause harmful or
4 offensive contact. Such contact with Plaintiff was deeply offensive to their personal dignity and
5 would offend a person of ordinary sensitivity.

6 76. As a direct and proximate result of the foregoing, Plaintiff suffered psychological
7 trauma, distress, anxiety, depression, loss of quality of life and dignity, as well as medical and
8 economic injuries.

9 77. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
10 States for the wrongful acts/omissions of its employees.

11 **FOURTH CLAIM FOR RELIEF**
12 ***Plaintiff Against the United States***
13 **(Intentional Infliction of Emotional Distress ("IIED") – California common law)**

14 78. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
15 as if fully set forth herein.

16 79. Plaintiff brings this claim against the United States under the FTCA based on acts
17 and/or omissions of Defendant United States and all other Defendants while working in their
18 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
19 acting within the scope of their employment as federal employees in their official uniforms during
20 work hours.

21 80. A person is liable for IIED when the defendant engages in outrageous conduct,
22 when the defendant intended to cause plaintiff to suffer emotional distress or engaged in the
23 conduct with reckless disregard to the probability of causing plaintiff to suffer emotional distress,
24 the plaintiff suffered emotional distress, and the outrageous conduct was a cause of the severe
25 emotional distress.

26 81. Defendant United States, individually or through its agents, servants, contractors,
27 and/or employees, engaged in extreme and outrageous conduct by subjecting Plaintiff to sexual
28 acts while incarcerated in their custody, through the above-described acts and omissions.

82. Plaintiff's injuries and damages were caused by intentional torts perpetrated by

1 Defendants. Under 28 U.S.C. § 2680(h), Defendant United States is liable for intentional torts
 2 perpetrated by its agents, including correctional officers, that occurred within the scope of their
 3 employment under color of federal law.

4 83. At all relevant times, Defendants were acting under color of law by supervising,
 5 disciplining, overseeing, monitoring, controlling, directing, restraining, and imprisoning Plaintiff
 6 within the scope of their employment for the United States.

7 84. Defendants used their authority as law enforcement officers to sexually assault and
 8 harass Plaintiff, and as a direct and proximate cause of this conduct Plaintiff has suffered
 9 psychological trauma, distress, anxiety, depression, loss of quality of life and dignity, as well as
 10 medical and economic injuries.

11 85. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
 12 States for the wrongful acts/omissions of its employees.

13 **FIFTH CLAIM FOR RELIEF**
 14 ***Plaintiff Against the United States***
 15 **(Sexual Harassment - Cal. Civ. Code § 51.9)**

16 86. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
 17 as if fully set forth herein.

18 87. Plaintiff brings this claim against the United States under the FTCA based on acts
 19 and/or omissions of Defendant United States and all other Defendants while working in their
 20 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
 21 acting within the scope of their employment as federal employees in their official uniforms during
 22 work hours.

23 88. A person is liable for sexual harassment when a special relationship exists between
 24 a plaintiff and person where there is a considerable imbalance of power; the defendant has made
 25 sexual advances, solicitations, sexual requests, demands for sexual compliance by plaintiff, or
 26 engaged in other verbal, visual, or physical conduct of a sexual nature or hostile nature based on
 27 gender, that were unwelcome and pervasive or severe; and the plaintiff has suffered or will suffer
 28 economic loss or personal injury including emotional distress or violation of a statutory or
 constitutional right.

1 89. There exists in FCI Dublin, as all prisons, an extreme imbalance of power between
 2 the officers and the incarcerated individuals. Officers control every aspect of incarcerated persons
 3 lives. In addition to this always-present imbalance of power, the problem is compounded by
 4 retaliation against those who report misconduct.

5 90. For purposes of Cal. Civ. Code § 51.9, a special relationship exists/existed between
 6 Defendants and Plaintiff due to the coercive power of the officers' positions.

7 91. Defendants in this special relationship with Plaintiff violated Cal. Civ. Code § 51.9
 8 by repeatedly sexually abusing her.

9 92. Plaintiff has suffered emotional distress as a result, including psychological trauma,
 10 distress, anxiety, depression, loss of quality of life and dignity, as well as medical and economic
 11 injuries.

12 93. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
 13 States for the wrongful acts/omissions of its employees.

14 **SIXTH CLAIM FOR RELIEF**
 15 ***Plaintiff Against the United States***
 16 **(Tom Bane Civil Rights Act– Cal. Civ. Code § 52.1)**

17 94. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
 18 as if fully set forth herein.

19 95. Plaintiff brings this claim against the United States under the FTCA based on acts
 20 and/or omissions of Defendant United States and all other Defendants while working in their
 21 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
 22 acting within the scope of their employment as federal employees in their official uniforms during
 23 work hours.

24 96. A person interferes with another's civil rights if the person uses or attempts to use
 25 threats, intimidation, or coercion to interfere with the exercise or enjoyment of rights secured by
 26 the Constitution or state or federal laws.

27 97. Speech alone is sufficient where the threatened person reasonably fears violence
 28 because the person threatening had the apparent ability to carry out the threat. Because of the
 coercive, and sometimes violent, nature of a prison and the fact that survivors had seen retaliation

1 before, Plaintiff reasonably feared violence by Defendants.

2 98. Defendant United States through its agents, servants, contractors, and/or employees
3 violate Plaintiff's rights, including but not limited to, their right of protection from bodily harm
4 and sexual violation, imposition of punishment without due process, and cruel and unusual
5 punishment. Defendants violated these rights by threats, intimidation, or coercion.

6 99. As a direct and proximate result of the foregoing, Plaintiff has suffered emotional
7 distress as a result, including psychological trauma, distress, anxiety, depression, loss of quality of
8 life and dignity, as well as medical and economic injuries.

9 100. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
10 States for the wrongful acts/omissions of its employees.

11 **SEVENTH CLAIM FOR RELIEF**
12 ***Plaintiff Against the United States***
(Gender Violence – Cal. Civ. Code § 52.4)

13 101. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
14 as if fully set forth herein.

15 102. Plaintiff brings this claim against the United States under the FTCA based on acts
16 and/or omissions of Defendant United States and all other Defendants while working in their
17 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
18 acting within the scope of their employment as federal employees in their official uniforms during
19 work hours.

20 103. Gender violence is a form of sex discrimination and includes a physical intrusion or
21 physical invasion of a sexual nature under coercive conditions, whether or not those acts have
22 resulted in criminal complaints, charges, prosecution, or conviction.

23 104. The conditions at FCI Dublin are that of coercive conditions, as evident by officers
24 regularly withholding things like out of cell time or personal property in exchange for sexual
25 favors. Further, officers exchanged sexual favors for perks that are not normally available to
26 inmates such as treats, alcohol, and the ability to roam the halls.

27 105. Defendants discriminated against Plaintiff based on her sex and/or gender when
28 they repeatedly sexually abused her, physically intruding and invading upon her bodies under

1 coercive conditions.

2 106. As a direct and proximate result of the foregoing, Plaintiff has suffered emotional
3 distress as a result, including psychological trauma, distress, anxiety, depression, loss of quality of
4 life and dignity, as well as medical and economic injuries.

5 107. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
6 States for the wrongful acts/omissions of its employees.

7 **EIGHTH CLAIM FOR RELIEF**
8 ***Plaintiff Against the United States***
9 **(Invasion of Privacy – California common law)**

10 108. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
11 as if fully set forth herein.

12 109. Plaintiff brings this claim against the United States under the FTCA based on acts
13 and/or omissions of Defendant United States and all other Defendants while working in their
14 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
15 acting within the scope of their employment as federal employees in their official uniforms during
16 work hours.

17 110. The elements of invasion of privacy are (1) whether the defendant intentionally
18 intruded, physically or otherwise, upon the solitude or seclusion, private affairs or concerns of the
19 plaintiff; (2) the intrusion was substantial, and of a kind that would be highly offensive to an
20 ordinarily reasonable person; and (3) the intrusion caused plaintiff to sustain injury, damage, loss,
21 or harm.

22 111. Defendants intentionally and substantially intruded, both physically and otherwise,
23 upon Plaintiff's seclusion when they repeatedly sexually abused her.

24 112. Such intrusions were substantial and highly offensive to an ordinarily reasonable
25 person due to their sexual and degrading nature.

26 113. As a direct and proximate result of the foregoing, Plaintiff has suffered emotional
27 distress as a result, including psychological trauma, distress, anxiety, depression, loss of quality of
28 life and dignity, as well as medical and economic injuries.

114. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United

1 States for the wrongful acts/omissions of its employees.

2 **NINTH CLAIM FOR RELIEF**
3 ***Plaintiff Against the United States***
4 **(Negligence – California common law)**

5 115. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
6 as if fully set forth herein.

7 116. Plaintiff brings this claim against the United States under the FTCA based on acts
8 and/or omissions of Defendant United States and all other Defendants while working in their
9 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
10 acting within the scope of their employment as federal employees in their official uniforms during
11 work hours.

12 117. At all relevant times, Defendant United States hired various correctional and/or
13 administrative personnel at FCI Dublin, including but not limited to wardens, associate wardens,
14 captains, lieutenants, unit managers, counselors, correctional officers, and investigators.

15 118. At all relevant times, FCI Dublin personnel, including individual Defendants, held
16 themselves out to Plaintiff as correctional and/or administrative personnel with the knowledge,
17 capacity, and ability to provide due care in accordance with standards of reasonable care common
18 and acceptable in the community.

19 119. **Duty.** United States and all other Defendants had a custodial duty, as well as a
20 mandatory statutory obligation under PREA and BOP policy, to protect Plaintiff, who was
21 incarcerated by the United States, from foreseeable harm, including sexual abuse. This duty was
22 non-delegable.

23 120. BOP policy forbids staff in engaging with sexual activity with inmates and staff
24 may not allow other people to engage in sexual activity. BOP policy makes clear that all sexual
25 activity with inmates, even non-physical, is against policy. BOP states that there is no such thing
26 as consensual sex between staff and inmates.

27 121. United States and all other Defendants also had a general duty of care to Plaintiff to
28 act as a reasonable prudent person would under similar circumstances.

122. It was the Defendants' duty to maintain, operate, and control FCI Dublin as a safe

1 and secure space for incarcerated people.

2 123. It was the Defendants' duty to protect incarcerated people from foreseeable harm
3 inflicted by BOP personnel.

4 124. **Breach of Duty.** The United States, individually or through its agents, servants,
5 contractors, and/or employees acting within the scope of their employment, breached those duties
6 by failing to supervise and operate FCI Dublin in a manner that would have prevented ongoing
7 sexual abuse and retaliation against Plaintiff.

8 125. A reasonable administrator would have complied with PREA regulations, including
9 safeguarding against retaliation for those who report misconduct.

10 126. A reasonable administrator would also not have exposed Plaintiff to the danger of
11 ongoing sexual abuse.

12 127. Agents, servants, contractors, and/or employees of Defendant United States knew
13 or should have known about the ongoing sexual abuse against Plaintiff, and in breaching their duty
14 directly exposed Plaintiff to an unreasonable risk of bodily injury and sexual assault.

15 128. Despite notice, Defendant United States, through its employees, did not take
16 reasonable, available measures to abate the risk of sexual abuse to Plaintiff in violation of federal
17 regulations and BOP policy.

18 129. The United States, through its employees also failed to train, retain, and supervise
19 officers as well as monitor and investigate them.

20 130. When the employer is aware of its employees' tortious conduct, as it was here, and
21 it ignores or assists in it, retention of employees does not represent legitimate policy
22 considerations warranting discretion.

23 131. At all relevant times, each of the Defendants stood in such a relationship with the
24 other Defendants as to make each of the Defendants liable for the acts and omissions of all other
25 Defendants in regard to their treatment of Plaintiff.

26 132. **Causation.** The United States' negligence in administering FCI Dublin is a direct
27 and proximate cause of Plaintiff's injuries, including psychological trauma, distress, anxiety,
28 depression, loss of quality of life and dignity, as well as medical and economic injuries.

1 133. Officers' employment at FCI Dublin was essential to their commission of tortious
2 misconduct, which would not have happened absent their employment and privileges.

3 134. Defendant officers' conduct was grossly negligent as they showed complete
4 disregard for rights and safety of Plaintiff.

5 135. It was foreseeable to FCI Dublin personnel that Plaintiff was at risk of imminent
6 serious harm including sexual abuse.

7 136. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United
8 States for the wrongful acts/omissions of its employees.

9 **TENTH CLAIM FOR RELIEF**
10 ***Plaintiff Against the United States***
11 **(Negligent Infliction of Emotional Distress ("NIED") – California common law)**

12 137. Plaintiff incorporates by this reference every allegation in the preceding paragraphs
13 as if fully set forth herein.

14 138. Plaintiff brings this claim against the United States under the FTCA based on acts
15 and/or omissions of Defendant United States and all other Defendants while working in their
16 official capacities at FCI Dublin. Defendants are employees of BOP and at all relevant times were
17 acting within the scope of their employment as federal employees in their official uniforms during
18 work hours.

19 139. The elements of an NIED claim are as follows: (1) the defendant engaged in
20 negligent conduct/a willful violation of a statutory standard; (2) the plaintiff suffered serious
21 emotional distress; and (3) the defendant's negligent conduct/willful violation of statutory
22 standard was a cause of the serious emotional distress.

23 140. Defendant officers and the United States engaged in negligent conduct and willful
24 violations of statutory standards by repeatedly sexually abusing Plaintiff, constituting both
25 extreme and outrageous behavior and the negligence.

26 141. The United States' negligence in administering FCI Dublin is a direct and
27 proximate cause of Plaintiff's injuries, including psychological trauma, distress, anxiety,
28 depression, loss of quality of life and dignity, as well as medical and economic injuries.

 142. Pursuant to the FTCA, Plaintiff is entitled to recover damages from the United

1 States for the wrongful acts/omissions of its employees.

2 **CLAIMS FOR RELIEF UNDER THE TVPA**

3 143. Plaintiff incorporates by this reference the allegations contained in the preceding
4 paragraphs as if set forth fully herein.

5 144. The exploitation of vulnerable people is so common that Congress has passed the
6 Trafficking Victims Protection Act (“TVPA”), 18 U.S.C. § 1581 *et seq.*, a comprehensive
7 statutory framework imposing both criminal and civil liability, *see* 18 U.S.C. § 1595, of persons
8 engaging or attempting to engage or benefit from sexual exploitation and labor trafficking or
9 obstructing anti-trafficking enforcement.

10 145. Specifically, the TVPA punishes anyone who attempts to, conspires to, or actively
11 “recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or
12 solicits by any means a person; or . . . benefits, financially or by receiving anything of value, from
13 participation in a [trafficking] venture” while knowing “that means of force, threats of force,
14 fraud, coercion . . . will be used to cause the person to engage in a commercial sex act.” 18 U.S.C.
15 § 1591(a); 18 U.S.C. § 1594.

16 146. “Coercion” means “threats of serious harm to or physical restraint against any
17 person . . . any scheme, plan, or pattern intended to cause a person to believe that failure to
18 perform an act would result in serious harm to or physical restraint against any person” or “the
19 abuse or threatened abuse of law or the legal process.” 18 U.S.C. § 1591(e)(2).

20 147. “Serious harm” means “any harm, whether physical or nonphysical, including
21 psychological, financial, or reputational harm, that is sufficiently serious, under all the
22 surrounding circumstances, to compel a reasonable person of the same background and in the
23 same circumstances to perform or to continue performing commercial sexual activity in order to
24 avoid incurring that harm.” 18 U.S.C. § 1591(e)(5).

25 148. The term “abuse or threatened abuse of law or legal process” means the use or
26 threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or
27 for any purpose for which the law was not designed, in order to exert pressure on another person to
28 cause that person to take some action or refrain from taking some action. 18 U.S.C. § 1591(e)(1).

1 149. Commercial sex act “means any sex act, on account of which anything of value is
2 given to or received by any person.” 18 U.S.C § 1591(e)(3).

3 150. Additionally, the TVPA punishes anyone who “knowingly provides or obtains the
4 labor or services of a person by any one of, or by any combination of, the following means.

5 (1) by means of force, threats of force, physical restraint, or threats of physical
6 restraint to that person or another person;

7 (2) by means of serious harm or threats of serious harm to that person or another
8 person;

9 (3) by means of the abuse or threatened abuse of law or legal process; or

10 (4) by means of any scheme, plan, or pattern intended to cause the person to believe
11 that, if that person did not perform such labor or services, that person or another
12 person would suffer serious harm or physical restraint.”

13 18 U.S.C. § 1589 (a).

14 151. The TVPA punishes anyone who knowingly benefits, financially or by receiving
15 anything of value, from participation in a venture which has engaged in the providing or obtaining
16 of labor or services by any of the means described in subsection (a), knowing or in reckless
17 disregard of the fact that the venture has engaged in the providing or obtaining of labor or services
18 by any of such means, shall be punished as provided in subsection (d). 18 U.S.C. § 1589 (b).

19 152. The term “abuse or threatened abuse of law or legal process” in the forced labor
20 provision means “the use or threatened use of a law or legal process, whether administrative, civil,
21 or criminal, in any manner or for any purpose for which the law was not designed, in order to exert
22 pressure on another person to cause that person to take some action or refrain from taking some
23 action.” 18 U.S.C. § 1589 (c)(1).

24 153. The term “serious harm” means “any harm, whether physical or nonphysical,
25 including psychological, financial, or reputational harm, that is sufficiently serious, under all the
26 surrounding circumstances, to compel a reasonable person of the same background and in the
27 same circumstances to perform or to continue performing labor or services in order to avoid
28 incurring that harm.” 18 U.S.C. § 1589 (c)(12).

154. The TVPA also punishes anyone who “obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section,” 18 U.S.C. § 1591(d).

155. The TVPA allows “[an] individual who is a victim of a violation of this chapter [to] bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.” 18 U.S.C. § 1595(a).

156. Congress grants a plaintiff up to ten years in which to bring a civil action under 18 U.S.C. § 1595(c).

ELEVENTH FIRST CLAIM FOR RELIEF
Plaintiff Against Defendants SMITH and KINLAW
(Sex Trafficking)

157. Defendants SMITH and KINLAW engaged or attempted to engage in sex trafficking of Plaintiff as prohibited under 18 U.S.C. § 1591, 1594(a).

158. Defendants SMITH and KINLAW forced Plaintiff to engage in commercial sex acts within the meaning 18 U.S.C. § 1591. These sex acts included masturbating in front of officers, performing oral sex with another inmate in front of officers and with .

159. Defendants SMITH and KINLAW knowingly recruited, enticed, and solicited Plaintiff by exchanging favorable treatment for sex acts.

160. Defendants SMITH and KINLAW made Plaintiff commit these sexual acts through force, fraud, or coercion within the meaning of 18 U.S.C. § 1591. For example by:

- assaulting and forcing Plaintiff to perform acts where plaintiff could not easily escape,
- using power and status as a correctional officer to control movement to facilitate sexual asks,
- threatening abuse and disciplinary action in exchange for sexual acts.

161. These methods of force, fraud, and coercion were a plan designed to make Plaintiff believe that she would suffer serious harm should she not obey his sexual advances.

162. These tactics are part of a well-known scheme, plan, or pattern at FCI Dublin by a

1 network of officers that were intended to cause a person to believe that failure to perform an act
2 would result in serious harm or physical restraint.

3 163. Defendants SMITH and KINLAW exchanged special benefits for these sex acts. In
4 this way, Defendants SMITH and KINLAW 's conduct constitutes an attempt to engage in sex in
5 exchange for things of value, the definition of commerciality under 18 U.S.C. § 1591.

6 164. These acts constitute civil wrongs inflicted on Plaintiff and actionable under 18
7 U.S.C. § 1595.

8 165. Defendant's conduct has caused Plaintiff serious harm including, without
9 limitation, physical, psychological, emotional, financial, and reputational harm and she has a claim
10 for damages for such violations under 18 U.S.C. §§ 1591, 1595.

11 166. Defendant's conduct warrants the Court's imposition of compensatory and punitive
12 damages against the Defendants.

13 167. Pursuant to 18 U.S.C. § 1595, Plaintiff is entitled to recover damages and
14 reasonable attorneys' fees for the Defendants' wrongful conduct.

15 **TWELFTH CLAIM FOR RELIEF**
16 ***Plaintiff Against Defendants SMITH and KINLAW***
17 **(Obstruction)**

18 168. Defendants SMITH and KINLAW together and individually obstructed or
19 attempted to obstruct enforcement efforts or investigations into the sex trafficking of Plaintiff
20 under 18 U.S.C. § 1591(d). They did so in the following ways:

- 21 • Intimidating Plaintiff by removing her from her kitchen position;
- 22 • Threatening to file disciplinary actions against Plaintiff;
- 23 • Intimidating Plaintiff by putting her in the SHU various times for false
24 disciplinary charges;
- 25 • Intimidating Plaintiff by taking privileges away; and
- 26 • Intimidating Plaintiff by searching her cell repeatedly and opening her mail.

27 169. These tactics are part of a well-known scheme, plan, or pattern at FCI Dublin by a
28 network of officers that were intended to cause a person to believe that reporting would result in
serious harm or physical restraint.

170. These acts constitute civil wrongs inflicted on Plaintiff and are actionable under 18 U.S.C. § 1595.

171. Defendants' conduct has caused Plaintiff serious harm including, without limitation, physical, psychological, emotional, financial, and reputational harm, and she has a claim for damages for such violations under 18 U.S.C. § 1591 and 18 U.S.C. § 1595.

172. Defendants' conduct warrants the Court's imposition of compensatory and punitive damages against the Defendants.

173. Pursuant to 18 U.S.C. § 1595, Plaintiff is entitled to recover damages and reasonable attorneys' fees for the Defendants' wrongful conduct.

THIRTEENTH CLAIM FOR RELIEF
Plaintiffs Against All Individual Capacity Defendants
(Conspiracy to Violate the Trafficking Victims and Protection Act, 18 U.S.C. § 1584)

174. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if set forth fully herein.

175. The Trafficking Victims Protection Act establishes that "[w]hoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section; . . . [and w]hoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both." 18 U.S.C. § 1594 (b), (c).

176. The TVPA allows "[an] individual who is a victim of a violation of this chapter [to] bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees." 18 U.S.C. § 1595(a).

177. Congress grants a plaintiff up to ten years in which to bring a civil action under 18 U.S.C. § 1595(c).

178. At all relevant times, Defendants knowingly agreed, contrived, confederated, acted in concert, aided and abetted, and/or conspired to continue their longstanding practice of

1 exchanging sex for valuable goods or special benefits as defined in 18 U.S.C. § 1591, or obtaining
 2 forced labor as defined in 18 U.S.C. § 1589 by coercing incarcerated people to perform sexual acts
 3 or to act as lookouts as the Defendants engaged in sexual acts.

4 179. All Defendants conspired to recruit, entice, harbor, transport, provide, obtain,
 5 maintain, patronize, solicit, or benefit from participation in the sex and/or labor trafficking of
 6 Plaintiffs as defined by 18 U.S.C. § 1581 *et seq.*

7 180. Defendants committed overt acts in furtherance of the agreement or understanding
 8 by committing one or more of the following acts:

- 9 • Directly receiving or attempting to receive sexual acts or labor in exchange
 10 for valuable goods or benefits;
- 11 • Transporting or directing incarcerated people into locations where principal
 12 perpetrating officers could engage or attempt in engage in sexual acts;
- 13 • Engaging in a range of retaliatory tactics to threaten and silence survivors or
 14 witnesses of sexual abuse or trafficking including but not limited to threats
 15 of physical abuse and/or restraint, threats of law or process, indiscriminate
 16 searches, taunting, and humiliation;
- 17 • Knowingly refusing to report abuse or trafficking occurring at FCI Dublin
 18 and/or obstructing investigation into abuse or trafficking;
- 19 • Ensuring confidential means of reporting abuse is not possible by
 20 indiscriminately opening legal mail, monitoring confidential or private
 21 communications, interfering with confidential or private communications,
 22 and intentionally preventing access to reporting mechanisms such as
 23 grievances and other reporting lines; and
- 24 • Maintaining practices, policies, and procedures that allowed Defendants to
 25 benefit from unlawful commercial sex ventures and human trafficking.

26 181. Defendants' participation and assistance in the furtherance of an illegal sex trafficking
 27 plan and/or purpose was intentional and/or willful and, therefore, Defendants intentionally and/or
 28 willfully caused the facilitation of the sex acts in support of their trafficking venture.

29 182. Defendants knew or should have known that their acts supported and facilitated a
 30 trafficking venture.

31 183. Defendants' conspiracy kept Plaintiff and other witnesses of the trafficking from
 32 taking meaningful action, resulting in significant injuries to Plaintiff.

33 184. Defendants' conduct caused Plaintiff serious harm including, without limitation,

1 physical, psychological, emotional, financial, and reputational harm, and Plaintiffs have claims for
2 damages for such violations under 18 U.S.C. § 1584; 18 U.S.C. § 1589, 18 U.S.C. § 1591; 18
3 U.S.C. § 1595.

4
5 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

6 **PRAYER FOR RELIEF**

7 Plaintiff prays for judgment against Defendants, and each of them, as follows:

8 185. An award of compensatory, punitive, and nominal damages to Plaintiff in an
9 amount to be determined at trial;

10 186. An award to Plaintiff, pursuant to 42 U.S.C. §§ 1988 and 12205 of the costs of this
11 suit and reasonable attorneys' fees and litigation expenses; and

12 187. For such other and further relief as this Court may deem just and proper.
13

14 Respectfully submitted,

15 DATED: March 7, 2024

ARNOLD & PORTER KAYE SCHOLER LLP

16 By: /s/ Carson D. Anderson

17 Stephen Cha-Kim
18 Carson D. Anderson
19 Natalie Steiert

20 DATED: March 7, 2024

RIGHTS BEHIND BARS

21 By: /s/ Oren Nimni

22 Ms. Amaris Montes (she/her)
23 Mr. Oren Nimni (he/him)

24 Attorneys for Plaintiff
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